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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1933

## No. 1096

LIZZIE MAY McCULLOUGH, Executrix of the Estate of Ida Reid, Deceased,

*Petitioner,*

*vs.*

W. M. SMITH, Administrator of the Estate of Moses Reid, Deceased.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

*To the Honorable Supreme Court of the United States:*

The petition of Lizzie May McCullough, Executrix of the Estate of Ida Reid, Deceased, respectfully shows to the Court:

### I.

### Statement of Facts.

Moses Reid, a veteran of the World War and the holder of a certificate of war risk insurance in the amount of $10,000, in which his father, Adolphus Reid, and his mother, Ida Reid, were named as beneficiaries, died intestate and without wife or issue on August 23, 1920, leaving surviving him his said father and mother as the distributees entitled under the statute law of the State of North Carolina to share equally his personal estate; his father died intestate

on November 22, 1926, and his mother died February 22, 1932, leaving a last will and testament in which her daughter, Lizzie May McCullough, was named as beneficiary and executrix (R. 1-2). No payments were made to any one on account of the certificate of insurance until after the death of the last surviving beneficiary on February 22, 1932. After the death of the last surviving beneficiary the Veterans' Bureau awarded the sum of $2,127.50 to the estate of the father, representing accrued monthly payments to which he was entitled prior to his death; the sum of $3,938.75 to the estate of the mother, representing accrued monthly payments to which she was entitled prior to her death; the sum of $862.50 to the estate of the insured, representing accrued monthly disability payments to which he was entitled prior to his death, and the further sum of $5,768 to the estate of the insured, representing the commuted value of unpaid installments at the time of the death of the last surviving beneficiary. The Veterans' Bureau required that a legal representative qualify to administer each estate before making payment of the sums awarded to the respective estates. Elijah Reid qualified as administrator of the estate of the father and has received the sum of $2,127.50; Lizzie May McCullough qualified as executrix of the estate of the mother and has received the sum of $3,938.75, and W. M. Smith qualified as administrator of the estate of the insured and has received the total sum of $6,630.50 (R. 6-7).

## II.

### Proceedings in State Courts.

On October 27, 1932, W. M. Smith, Administrator of the Estate of Moses Reid, made application to the Superior Court of Mecklenburg County, North Carolina, for a declaratory judgment directing him in the administration

of the estate of the insured (R. 1-4). The application for a declaratory judgment came on for hearing before the Judge presiding at the November 14, 1932, Special Term of the Superior Court of Mecklenburg County, and the judgment which appears on pages 5 to 8 of the record was entered on November 26, 1932. The Executrix of the Estate of Ida Reid appealed from the judgment to the Supreme Court of North Carolina, excepting to and assigning as error the following portion of the judgment: "That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally." (R. 7.) The appeal was before the Supreme Court of North Carolina at the Fall Term, 1933. The Superior Court judgment was affirmed by the Supreme Court. The Supreme Court opinion was certified to the Superior Court on April 2, 1934, as shown by certificate of the Supreme Court clerk filed herewith, and the judgment thereupon became a final judgment of the Superior Court of Mecklenburg County.

## III.

### Reason Writ Should Be Granted.

The opinion of the Supreme Court of North Carolina, certified copy of which is filed herewith, has been reported in 173 S. E. at page 49. It holds in brief that inasmuch as neither beneficiary in the War Risk Insurance policy received any installment from the government during his or her life, the whole fund, including the awards made by

the Veterans' Bureau to the estates of the beneficiaries, in contemplation of law is now assets of the estate of the dead soldier, to be distributed immediately share and share alike to the estates of his father and mother. This opinion deals with three separate estates arising out of a contract between the Federal Government and a World War veteran in which the father and mother of the veteran were designated as beneficiaries. It decides a Federal question of substance in a way not in accord with applicable decisions of the Supreme Court of the United States. It disregards entirely the awards of accrued monthly payments made to the estates of the beneficiaries by the Veterans' Bureau under the provisions of the World War Veterans' Act as interpreted by applicable decisions of the Federal courts.

WHEREFORE, your petitioner prays that a writ of certiorari be issued under the seal of the Court, directed to the Supreme Court of the State of North Carolina, sitting at Raleigh, North Carolina, commanding that court to send up to this Court on a day to be designated a full and complete transcript of the record and all proceedings of that court in the action entitled "In the Matter of the Estate of Moses Reid," being No. 399 on the docket of said court, to the end that the said action may be reviewed and your petitioner granted such relief or remedy in the premises as to this Honorable Court may seem just and proper, and your petitioner will ever pray.

JOHN M. ROBINSON,
*Counsel for Lizzie May McCullough,*
*Executrix of the Estate of Ida Reid,*
*Deceased, Petitioner.*

J. H. MCLAIN,
*Of Counsel.*

## BRIEF IN SUPPORT OF PETITION.

### Opinion of State Court.

The opinion of the Supreme Court of North Carolina has been reported in 173 S. E., page 49. A certified copy of the opinion in full is filed with the record.

### Jurisdiction.

The opinion of the Supreme Court of North Carolina was filed in the office of the clerk of that court on February 28, 1934; was certified by the clerk of that court to the Superior Court of Mecklenburg County on April 2, 1934, and thereupon became a final judgment of the Superior Court of Mecklenburg County, North Carolina. Certificate of the clerk of the Supreme Court of North Carolina is on file with the record.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

### Facts.

The facts are succinctly stated in the petition (pages 1 and 2) and are fully stated in the agreed statement of facts appearing in the judgment of the Superior Court of Mecklenburg County (R. 5-7).

### Question Involved.

The opinion of the Supreme Court of North Carolina is in conflict with the provisions of the World War Veterans' Act 1924, Sec. 303, as amended by Act March 4, 1925 (38 U. S. C. A. Sec. 514) and with the applicable decisions of the Supreme Court of the United States in holding that the

whole fund arising out of the certificate of War Risk Insurance held by insured, including the awards of accrued monthly installments made by the Veterans' Bureau to the designated beneficiaries, now constitutes assets of the estate of the dead soldier.

**Petitioner's Contention.**

Three separate and distinct estates arose out of the proceeds from the certificate of War Risk Insurance held by Moses Reid. The Veterans' Bureau required that a legal representative qualify to administer each estate before payment of the awards was made. Each estate should be administered in accordance with the laws of North Carolina without regard to the amounts awarded to the other two estates or either of them. The judgment of the state court should be modified so as to direct the administrator of the estate of Moses Reid to distribute the $6,630.50 awarded by the Veterans' Bureau to said estate in accordance with the intestate laws of the state of North Carolina without regard to the amounts awarded to the estates of the beneficiaries.

## ARGUMENT.

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**Rights of Designated Beneficiaries.**

In the case of *U. S.* v. *Woolen* (C. C. A., Tenn., 1928), 25 F. (2d) 673, the designated beneficiary in a certificate of War Risk Insurance was held *to be vested with all unpaid installments which accrued before her death*, and it was further held that title thereto passed under state laws to her successors. On appeal to the Supreme Court of the United States, 278 U. S. 665, 49 S. Ct. 249, the case was remanded with instructions *to enter judgment in*

*favor of the respondent for the amount of the accrued installments* without interest, the lower court having erroneously awarded interest.

That the beneficiary of War Risk Insurance has no vested rights in installments falling due after the death of the beneficiary is held in the case of *U. S.* v. *Worley*, 281 U. S. 339, 50 S. Ct. 291.

**Estate of Insured.**

The case of *Singleton* v. *Cheek*, 284 U. S. 493, 76 L. Ed. 419, is cited in the opinion of the Supreme Court of North Carolina. To arrive at the true import of the decision in that case it is necessary to examine the report of the opinion of the State court of Oklahoma in 7 P. (2nd) 140. The Supreme Court of North Carolina surely had not made a full investigation and study before citing the case of the true meaning of the holding in the opinion of Justice Southerland that "All installments, whether accruing before or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured upon the instant of his death." The case of *Singleton* v. *Cheek* is parallel to the instant case as to facts except that there was one beneficiary instead of two. In that case, however, the award to the beneficiary was not in controversy. The opinion deals entirely with disability installments which had accrued before the death of the beneficiary and the commuted value of the unpaid installments falling due after the death of the beneficiary. It is most certainly not held in that case that the award made to the beneficiary constituted assets of the estate of the insured as that award was not in controversy. The estate of the insured in that case as in the instant case consisted entirely of accrued disability payments and commuted value of unpaid installments.

**Prior North Carolina Decisions.**

All the decisions of the Supreme Court of North Carolina are in accord with the decisions of the Supreme Court of the United States in holding that the heirs of an insured soldier are determined as of the instant of his death and not as of the date of the death of the beneficiary, but the decisions in the cases entitled: *In re Estate of Pruden,* 199 N. C. 256, 154 S. E. 7; *Grady* v. *Holl,* 199 N. C. 666, 155 S. E. 565, and the instant case are in conflict with the statute law of the United States and the United States Supreme Court decisions as to what constitutes the estate of the deceased soldier.

The Superior Court judge recites that the ruling in the fifth paragraph of his judgment (R. 7) is based upon the decisions of the Supreme Court of North Carolina, as laid down in *Pruden's* case, 199 N. C. 256, and in *Holl's* case, 199 N. C. 666. Neither the *Pruden* case nor the *Holl* case recognizes the fact that a beneficiary has a vested right in monthly payments accruing prior to the death of the beneficiary. In the *Holl* case the mother of the deceased soldier was still living and drawing monthly payments and for that reason was not allowed to participate in the distribution of the commuted value of the unpaid installments to which the father and co-beneficiary would have been entitled had he lived and which had been paid to the administrator of the estate of the deceased soldier to be distributed in accordance with the laws of the State of his domicile. The *Pruden* and *Holl* cases are different, if not distinguishable, from the instant case in that the beneficiaries were statutory and not designated, and in each case one of the beneficiaries was still living.

## Conclusion.

Inasmuch as Adolphus Reid, the father, at the time of his death had a vested right to the $2,127.50 which has been paid into his estate, and Ida Reid, the mother, at the time of her death had a vested right to the $3,938.75, which has been paid into her estate (*U. S.* v. *Woolen,* 278 U. S. 665), the fact that these two amounts are not the same cannot be taken into consideration in the administration of the estate of the insured. In view of the decision in *U. S.* v. *Worley,* 281 U. S. 339, which holds that a beneficiary has no vested right in installments falling due after the death of the beneficiary, no portion of the estate of the insured can be arbitrarily lifted out of that estate and dumped into the estate of Adolphus Reid, the father, solely for the purpose of making that estate equal in amount to the estate of Ida Reid, the mother.

If the whole fund constitutes assets belonging to the estate of insured, the administrations required by the Veterans' Bureau on the estates of the father and mother are superfluous, and the whole fund should have been awarded to the estate of insured.

For the purposes of the administration of the estate of Moses Reid, Adolphus Reid, the father, and Ida Reid, the mother, are separate and distinct identities from Adolphus Reid and Ida Reid as heirs at law or distributees of the insured. If the designated beneficiaries in the certificate of insurance held by Moses Reid had been an uncle and an aunt or a brother and a sister instead of his father and mother, the decision of the State court in the instant case would fall flat and become an absurdity. In such event, the fact that the uncle and aunt of brother and sister had received unequal amounts could hardly be considered in the distribution of the estate of insured to the estates of his father and mother.

For the reasons set out in the petition and brief, and to the end that the decisions of the Supreme Court of North Carolina in respect to the administration of the estates of deceased soldiers arising out of War Risk Insurance may more nearly conform to the decisions of the United States Supreme Court and administrators in North Carolina on such estates may not be confronted with such conflict of authority, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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*Executrix of the Estate of Ida Reid,*
*Deceased, Petitioner.*

J. H. MCLAIN,
*Of Counsel.*